

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**GREGORY PFANNENSTIEL**

Claimant

VS.

**CITY OF NORTON**

Respondent

AND

**EMC INSURANCE COMPANY**

Insurance Carrier

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) Docket Nos. 239,545 & 244,920

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**ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on July 28, 1999. The Order granted claimant's request for payment of medical expenses and temporary total disability benefits.

**ISSUES**

Claimant has alleged accidental injury on alternative dates. In Docket No. 239,545, he alleges injury to his low back from an accident on or about March 10, 1998, while working in a crawl space and lifting. In Docket No. 244,920, claimant alleges alternative dates of accident. He alleges an accidental injury on July 20, 1998, and in the alternative he alleges injury in a series through January 1999 or March 16, 1999. At the preliminary hearing, claimant asked for and received permission to amend this second claim to allege an additional alternative accidental injury through September 23, 1998.

The only issue raised by respondent on appeal is whether claimant gave notice of injury in July 1998. Respondent admits compensability of the injury on March 10, 1998, and also accepts responsibility for injury after July 1998.

Claimant contends he is entitled to additional temporary total disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

Claimant testified that he injured his back in March 1998 when he worked in a bent-over position for about two and one-half hours. He reported the problem, received medical treatment with Dr. Glenda Mauer, and missed five days of work. He continued to have some problems with his back but continued to work. In July 1998, while setting up and tearing down the county fair equipment, the condition worsened. There was no specific incident; it gradually worsened while doing this work. Claimant testified he reported the problem to his supervisor, George Jones. He did not fill out an accident report until August. According to claimant, he could not get his supervisor to fill out the report so he went to the secretary, Darla Ellis, and she gave him the form. The form is dated August 14, 1998, and states claimant further aggravated his back tearing down the fair equipment.

After the worsening in July, claimant sought additional treatment and was referred to Dr. Robert T. Urban, an orthopedic physician. Dr. Urban referred claimant to Dr. S. G. Brestin who performed surgery on September 24, 1998. Claimant testified that his condition worsened through the last date he worked before the surgery, September 23, 1998. Following the surgery, claimant was off work approximately nine weeks. When he returned, he injured his back again in January 1999 while removing tree limbs from power lines.

Respondent now accepts responsibility for the medical care before the condition worsened in July 1998 and after January 1999, but denies that it should be responsible for the surgery and related medical care in September 1998. Respondent denies that it had notice of the July injury and contends the July injury was the injury which resulted in the surgery.

The Board first finds the date of accident for the injury which resulted in surgery was September 23, 1998, the last date claimant worked before the surgery. *Treaster v. Dillon Companies, Inc.*, Docket No. 80,830 (Kan. 1999). The notice given before this assigned date of accident satisfies the statutory requirement. As a result, respondent is responsible for the medical care the ALJ ordered, including medical care rendered in September before the technical date of accident. The date of accident is assigned for the purpose of a beginning point for permanent benefits, determining average weekly wage, and based on the *Treaster* decision for the purpose of extending the time allowed for notice. But the date is a legal fiction. The injury actually occurred over a period of time. And the assignment of this date does not mean that no one is responsible for the medical care necessary to treat the work-related injury received during the period of the injury. The fiction of the date of accident should not be taken literally or beyond its useful purposes.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on July 28, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1999.

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BOARD MEMBER

c:     Jeffrey E. King, Salina, KS  
       James M. McVay, Great Bend, KS  
       Bruce E. Moore, Administrative Law Judge  
       Philip S. Harness, Director